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10 *Attorneys for Plaintiffs*

11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**

13 DAKOTA MASSIE and NEIL MANGANI,
14 individually and on behalf of all others similarly
15 situated,

16 Plaintiffs,

17 v.

18 GENERAL MOTORS COMPANY and
19 DECIBEL INSIGHT, INC.,

20 Defendants.

21 CASE NO.: 1:20-CV-01560-NONE-JLT

22 **STIPULATION AND [PROPOSED] ORDER
23 TO PERMIT PLAINTIFFS TO FILE A
24 CORRECTED COMPLAINT, SET
25 DEADLINES FOR BRIEFING ON
26 DEFENDANTS' MOTIONS TO DISMISS THE
27 COMPLAINT, AND TO CONTINUE INITIAL
28 SCHEDULING CONFERENCE AND
RELATED DEADLINES**
(Doc. 10)

1 Pursuant to Local Rule 143, Plaintiffs Dakota Massie and Neil Manglani (“Plaintiffs”) and
2 Defendants General Motors Company and Decibel Insight, Inc. (collectively, “Defendants”), by and
3 through their respective counsel, hereby stipulate as follows:

4 WHEREAS, Plaintiffs filed the Complaint on November 4, 2020, ECF No.1, alleging violations
5 of the California Invasion of Privacy Act, Cal. Penal Code §§ 631 and 635, and invasion of privacy under
6 California’s Constitution;

7 WHEREAS, on November 4, 2020, the Court issued an order setting an Initial Scheduling
8 Conference for January 27, 2021, along with related deadlines, ECF No. 3;

9 WHEREAS this Court on November 24, 2020, granted a stipulation to extend Defendant Decibel
10 Insight, Inc.’s time to respond to the Complaint by 60 days, up to and including February 1, 2021, ECF
11 No. 7;

12 WHEREAS, this Court on November 30, 2020, granted a stipulation to extend General Motors
13 Company’s time to respond to the Complaint by 45 days, up to and including January 25, 2021, ECF No.
14 9;

15 WHEREAS counsel for General Motors Company informed counsel for Plaintiffs that General
16 Motors LLC, and not General Motors Company, is the owner and operator of the websites named in the
17 Complaint, and General Motors LLC is therefore the proper party to this action. *See* Compl. ¶ 1 n.1;

18 WHEREAS, Plaintiffs intend to file a Corrected Complaint to add General Motors LLC as a
19 Defendant and to remove General Motors Company as a Defendant;

20 WHEREAS, the counsel for the Plaintiffs and Defendants (together, the “Parties”) met and
21 conferred on January 7, 2021 in accordance with the Court’s Scheduling Order;

22 WHEREAS, Defendants intend to file motions to dismiss the Corrected Complaint for lack of
23 personal jurisdiction or, in the alternative, to transfer the case to a more convenient forum (the
24 “Jurisdictional Motions”);

25 WHEREAS, Defendants also intend to file motions to dismiss for failure to state claim under Fed.
26 R. Civ. P. 12(b)(6) (the “12(b)(6) Motions”);

27 WHEREAS, each Defendant’s motions will raise substantially similar issues as the other

1 Defendant's motions, but the Defendants' deadlines to file those motions currently differ;

2 WHEREAS, to promote efficiency and conserve both the Court's and the Parties' resources, the
3 Parties agree it would be beneficial to (a) consolidate the briefing schedules for the Defendants' motions
4 and (b) resolve the Jurisdictional Motions before briefing the 12(b)(6) Motions;

5 WHEREAS, continuing the Initial Scheduling Conference until after Defendants' motions can be
6 heard will further promote efficiency and conserve judicial and party resources, as the issues to be
7 discussed at that conference—including the proposed case schedule, contested issues, and discovery
8 procedures—will be affected or mooted by the Court's resolutions of those motions;

9 WHEREAS, on January 12, 2021, Plaintiffs served Defendants with merits-based Requests for
10 Production under Fed. R. Civ. P. 34 and Interrogatories under Fed. R. Civ. P. 30;

11 WHEREAS, Defendants object to responding to merits-based discovery or serving initial
12 disclosures because they are not subject to personal jurisdiction before the Court;

13 WHEREAS, to promote efficiency and conserve the Court's and the Parties' resources, the Parties
14 have agreed that Defendants' responses to Plaintiffs' merits-based discovery and the Parties' service of
15 initial disclosures will be stayed until 30 days after an Order denying Defendants' Jurisdictional Motions,
16 or if the Court grants Defendants' Jurisdictional Motions, the initial disclosure and Defendants' responses
17 to Plaintiffs' merits-based discovery will either be (a) mooted, should the Court decline to transfer this
18 case; or (b) stayed until thirty-days following the transfer of this case to a different forum;

19 WHEREAS, Defendants reserve their rights to seek an additional stay of discovery pending
20 resolution of the 12(b)(6) Motions;

21 WHEREAS, this Stipulation is made without prejudice to any Party's rights and nothing in this
22 Stipulation shall constitute the waiver of any claims, defenses, or arguments, including Defendants'
23 defenses for lack of personal jurisdiction;

24 NOW, THEREFORE, THE PARTIES HEREBY STIPULATE as follows:

25 1. Plaintiffs shall be permitted to file a Corrected Complaint adding General Motors LLC as
26 a Defendant and removing General Motors Company as a Defendant, without using their amendment as
27 of right, within two days of the Court's approval of this stipulation.

1 2. Defendant Decibel Insight, Inc. and General Motors LLC shall file their Jurisdictional
2 Motions on or before **February 1, 2021**.

3 3. Plaintiffs shall file their oppositions to the Jurisdictional Motions by **February 23, 2021**.

4 4. Defendants shall file replies in support of their Jurisdictional Motions by **March 8, 2021**.

5 5. Hearings on Defendants' Jurisdictional Motions will be set for **March 16, 2021, at 9:30**
6 **a.m.**, or as soon thereafter as convenient for the Court.

7 6. If the Court denies either or both Defendants' Jurisdictional Motions, such Defendant(s)
8 shall file their 12(b)(6) Motions, if necessary, within 30 days of the Court's ruling on Defendants'
9 Jurisdictional Motions.

10 7. Defendants' Answer to the complaint or any amended or Corrected Complaint that is filed
11 shall be stayed pending resolution of Defendants' Jurisdictional Motions and 12(b)(6) Motions;

12 8. Defendants' responses to Plaintiffs' merits-based discovery and the Parties' service of
13 initial disclosures is stayed pending the resolution of Defendants' Jurisdictional Motions;

14 9. If the Court denies either or both Defendants' Jurisdictional Motions, such Defendant(s)
15 shall respond to Plaintiffs' merits-based discovery and the Parties shall serve initial disclosures 30 days
16 after the Court's ruling on Defendants' Jurisdictional Motions; if, alternatively, the Court grants either of
17 both Defendants' Jurisdictional Motions, the schedule for initial disclosures and responses to merits-
18 based discovery shall be as follows: (1) mooted, should the Court decline to transfer the case for one or
19 both Defendants; or (2) stayed until thirty-days following the transfer of this case to a different forum.

20 10. Notwithstanding the foregoing, after the resolution of the Jurisdictional Motions,
21 Defendants may move for an additional stay of discovery pending resolution of the 12(b)(6) Motions,
22 which Plaintiffs may oppose;

23 11. The Initial Scheduling Conference shall be continued pending the resolution of
24 Defendants' Jurisdictional Motions.

25 12. The Parties' Joint Scheduling Report shall be filed seven days before the Initial
26 Scheduling Conference.

27 The Parties respectfully request that this Stipulation be granted by signing the accompanying
28

1 proposed order.

2 DATED: January 19, 2021

3 BURSOR & FISHER, P.A.

4 By: /s/ L. Timothy Fisher

5 L. Timothy Fisher
Joel D. Smith

6 *Attorneys for Plaintiffs*

7 DATED: January 19, 2021

8 MAYER BROWN LLP

9 By: /s/ John Nadolenco

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17 *Attorneys for Defendant General Motors Company*

18 DATED: January 19, 2021

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26 *Attorneys For Defendant Decibel Insight, Inc.*

[PROPOSED] ORDER

The Court **GRANTS** in **PART** the stipulation of the parties and **ORDERS**:

1. Within two days of this order, the plaintiffs may file, if at all, an amended complaint naming General Motors LLC as a defendant and removing General Motors Company as a defendant;

2. Defendant Decibel Insight, Inc. and General Motors LLC may file, if at all, their motions to dismiss for lack of personal jurisdiction or, in the alternative, to transfer no later than February 1, 2021. An opposition or statement of non-opposition SHALL be filed no later than February 23, 2021.

The replies, if any, SHALL be filed no later than March 8, 2021;

3. The filing of the defendants' answers to the complaint or the amended complaint is stayed pending resolution of the defendants' jurisdictional motions;

4. The defendants' responses to the plaintiffs' merits-based discovery and the service of initial disclosures is stayed pending the resolution of the defendants' jurisdictional motions;

5. The scheduling conference is **CONTINUED** to April 30, 2021 at 8:30 a.m.;

6. All other portions of the stipulation are **DENIED** without prejudice because the Court, in ruling on the motions asserting jurisdiction/venue, may address these issues. If it does not, the parties may raise these issues at that time if needed.

IT IS SO ORDERED.

Dated: January 19, 2021

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE